

STATE OF MICHIGAN
COURT OF APPEALS

TECHSYS, INC. and JAY W. PEASE,

Plaintiffs-Appellees,

v

JACK LIFTON, EXIMP, INC., and CATHERINE
KUPPER,

Defendants,

and

ALBURY INTERNATIONAL LTD., CHARLES
SCHEIN, and ROMAUTOPLAST FRANCE,
S.A.R.L.,

Defendants-Appellants.

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendants Albury International, Schein, and Romautoplast France appeal as on leave granted after remand from the Supreme Court the order denying their motion to set aside defaults and default judgments. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants failed to answer the complaint, and defaults were taken. Plaintiffs moved for default judgment, and defendants failed to appear for the hearing. Plaintiffs' counsel presented minimal evidence to show damages, and represented to the court that it was unlikely that they would collect on the judgment, and he would just like to get the case over with. In accord with plaintiffs' request, the court entered judgment in favor of Techsys for \$812,930.97 plus interest, judgment in favor of Pease for \$4,281,573.00 plus interest, and attorney fees of \$46,822.31.

The trial court denied defendants' motion to set aside the defaults and default judgment, and this Court denied their application for leave to appeal. The Supreme Court remanded for consideration as on leave granted, limited to the issues whether the trial court abused its discretion in failing to set aside the damages portion of the default judgment and whether to remand the matter for a new hearing on the issue of damages.

A motion to set aside a default or a default judgment, except when grounded in lack of jurisdiction, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. MCR 2.603(D). A ruling on a motion to set aside a default or a default judgment is entrusted to the discretion of the trial court, and will not be set aside unless there has been a clear abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). Although the law favors the determination of claims on the merits, the policy of the state is generally against setting aside default judgments that have been properly entered. *Id.*, 229.

A default settles the question of liability and precludes the defaulting party from litigating that issue. *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 79; 618 NW2d 66 (2000). However, a default is not an admission regarding damages, and a defendant has a right to participate where further proceedings are necessary to determine the amount of damages. *Id.*

If it is necessary to determine the amount of damages, the court may conduct hearings it deems proper. MCR 2.603(B)(3)(b). Further proceedings are generally required to determine the amount of a judgment on an unliquidated claim. *American Central Corp v Stevens Van Lines, Inc*, 103 Mich App 507, 512-513; 303 NW2d 234 (1981).

Plaintiffs failed to present sufficient evidence to the trial court that would support their claim for damages. The evidence submitted included conclusory summaries of the damage claims, and a bankruptcy court's temporary assessment of plaintiffs' claims for purposes of voting on a bankruptcy plan. No evidence was provided to support the amount of attorney fees claimed. The trial court therefore abused its discretion in failing to set aside the damages part of the default judgment. A new hearing on the issue of damages is required, in which the defaulting defendants can participate. *Midwest Mental Health v Blue Cross/Blue Shield*, 119 Mich App 671, 675; 326 NW2d 599 (1982) (recognizing a defaulted defendant's right to participate in a damages hearing even though the default entered was for failure to timely defend action).

Reversed and remanded for a new hearing only on the issue of damages. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray